

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.75.101, 37.75.109,) PROPOSED AMENDMENT
37.75.202, 37.75.205, 37.75.206, and)
37.75.209 pertaining to the Child and)
Adult Care Food Program (CACFP))

TO: All Concerned Persons

1. On December 23, 2008, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room of the Colonial Building, at 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on December 15, 2008, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.75.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Active recruitment" means direct contact, initiated by a day care home sponsor, with a provider that is currently participating in the Child and Adult Care Food Program (CACFP) under a current CACFP Sponsor/Provider Agreement, for the purpose of enticing the provider to ~~enroll with or switch~~ the provider's CACFP Sponsor/Provider Agreement to a different sponsor. Examples of such direct contact considered to be active recruitment include but are not limited to a contact made in person, by phone call, through e-mail, by fax, and through a mailing or through a newsletter that is invitational in content disseminated by a sponsor to one or more providers that it does not sponsor.

(2) through (29) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

37.75.109 AUDIT GRANTS (1) An institution may be eligible to receive a grant from the department for the purpose of reimbursing the institution for all or part of the CACFP portion of an audit. To qualify for a grant, an institution must meet the following minimum requirements:

(a) and (b) remain the same.

(c) Complete and return the annual Audit Questionnaire and Grant Application to be provided by the department for the purpose of complying with the accounting and audit requirements of the federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations", and the provisions of OMB Circular A-122, "Cost Principles for Nonprofit Institutions", concerning the use of the funds provided by the contractual agreement.

~~(e)~~ (d) Prior to beginning an audit, the institution must submit to the department for approval:

(i) a completed request for partial reimbursement of audit expenses;

(ii) a signed copy of the audit proposal, including the proposed audit cost, the resume of the on site auditor or auditors, and certification that the audit will include tests of the CACFP in accordance with the current federal "Office of Management and Budget (OMB)" circular A-133 and the USDA OMB supplement for the "Catalog of Federal Domestic Assistance (CFDA)" 10.558, Child and Adult Care Food Program, dated March 2002; and

(iii) remains the same.

~~(d)~~ (e) Prior to beginning the audit, the institution must:

(i) remains the same.

(ii) obtain prior written approval for the audit from the department.

~~(e)~~ (f) The audit must be completed no later than nine months after the end of the fiscal year being audited.

(2) through (3) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

37.75.202 TIERING CHANGES (1) and (2) remain the same.

(3) A day care home may submit a request for a tier change evaluation to its sponsor. If approved, the change will be effective as noted below:

(a) and (b) remain the same.

(c) a change made ~~as a result of an investigation or~~ to correct a tiering error will be retroactive to the first day of the month in which the date of the error occurred.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

37.75.205 PROVIDER ENROLLMENT (1) remains the same.

(2) Each sponsor must do the following when enrolling a new day care home for participation in the CACFP:

(a) unless (3) applies, obtain licensing verification in the form of:

- (i) through (iii) remain the same.
- (iv) a screen print from the ~~virtual pavilion~~ department's web site, www.childcare.mt.gov, under "Programs & Services, Find Child Care" showing that the provider is registered and the effective dates of the registration; and
- (b) through (10) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

37.75.206 RECRUITMENT (1) remains the same.

(2) A DCH sponsor may not ~~recruit~~ engage in active recruitment as defined in ARM 37.75.101(1) of a provider that is participating in the CACFP under a current CACFP ~~s~~Sponsor/~~p~~Provider aAgreement with any other DCH sponsor.

(3) A sponsor that the Montana CACFP determines has engaged in active recruitment as defined in ARM 37.75.101(1) will be subject to disciplinary action.

(4) Suspected active recruitment violations, if reported, must be submitted to the Montana CACFP staff in writing for investigation.

~~(4)~~ (5) Corrective action will include the following:

(a) through (b)(ii) remain the same.

~~(c) If more than two violations occur, the department will issue written notice to the sponsor that a recruiting violation has occurred, written notice that it is seriously deficient and that, if the serious deficiency is not fully and permanently corrected, an intent to terminate will be issued. The~~ For subsequent violations, the Montana CACFP will issue written notice to the sponsor that the number of DCH providers served by the sponsor will be capped for a minimum of one year, and the sponsor will not be allowed to enroll any new providers or any providers changing sponsors without specific prior written approval from the Montana CACFP.

(5) remains the same but is renumbered (6).

~~(6) A corrective action for active recruitment will remain in effect from the date of violation for three years. Three years after the original violation, the violation cycle will start over, with the exception that, if a third recruiting violation occurs, the minimum one year cap on enrollment may continue into the following three year period. An example is:~~

~~(a) an original violation occurs on November 1, 2006;~~

~~(b) a third recruiting violation occurs on October 30, 2009; and~~

~~(c) enrollment is capped from October 30, 2009 through October 30, 2010, extending into the following three year period.~~

~~(7) When a third recruiting violation occurs and enrollment is capped for one year for a period which spans two three year periods, the violation will count as the third violation in the previous three year period and will not count as the first violation in the next three year period.~~

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

37.75.209 SPONSOR CHANGE BY PROVIDER (1) and (2) remain the same.

(3) Except as provided in (5), a participating day care home may change its CACFP sponsor according to these guidelines:

(a) remains the same.

(b) To change sponsors, a provider must notify its current sponsor in writing of its intention to change to another sponsor on or before the ~~fifth~~ final working day of the month prior to the month in which the change to a new sponsor is to be effective. The current sponsor must submit a copy of the written notification to the department.

(4) through (6) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

4. The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.75.101, 37.75.109, 37.75.202, 37.75.205, 37.75.206, and 37.75.209.

ARM 37.75.101

ARM 37.75.101(1) is revised to clarify the definition of "Active Recruitment" to reflect more accurately the intent in the federal guidelines and to match the language in ARM 37.75.206.

The change will apply to and should not adversely affect approximately 11 CACFP participants currently receiving reimbursement. It is estimated that 100% of the above-mentioned participants will meet eligibility criteria for this program.

There will not be additional cost to the state. No controversy is anticipated over this change.

ARM 37.75.109

ARM 37.75.109(1)(c) has been updated to include among the minimum requirements for an institution to be eligible for an Audit Grant the submission of a completed Audit Questionnaire and Grant Application form. This form enables the department to determine how many A-133 audits the department may expect to conduct and to identify which contractors may be requesting partial audit reimbursement. The department has always required this form to be completed and submitted, but inadvertently did not include it in the list of required documents under this rule.

ARM 37.75.109(1)(d)(i) has been updated to specify that institutions meeting the audit requirement stipulated in OMB Circular A-133 may qualify to receive CACFP partial reimbursement of the actual direct cost of auditing the CACFP.

ARM 37.75.109(1)(e)(ii) has been updated to clarify that prior written approval is required from Montana CACFP before any firm conducts an audit under this rule so

that eligibility to do so can be determined using the web based "Excluded Parties List System" located at www.epls.gov. Audit reimbursement is not available to those institutions that are not required to have an A-133 audit.

The changes will apply to and should not adversely affect approximately 30 CACFP participants currently receiving reimbursement. It is estimated that 100% of the above-mentioned participants will meet eligibility criteria for this program.

There will not be additional cost to the state. No controversy is anticipated over this change.

ARM 37.75.202

ARM 37.75.202(3)(c) is revised to clarify that if a sponsor approves a request by a day care home for a tier change evaluation to correct a tiering error, the change will be retroactive to the first day of the month in which the error occurred. This clarification is needed to reflect the prohibition in federal law of a mid-month tier change.

The change will apply to and should not adversely affect approximately 850 CACFP participants currently receiving reimbursement. It is estimated that 100% of the above-mentioned participants will meet eligibility criteria for this program.

There will not be additional cost to the state. No controversy is anticipated over this change.

ARM 37.75.205

ARM 37.75.205(2)(a)(iv) is revised to specify that contractors may use a screen print from the department's web site, www.childcare.mt.gov, under "Programs & Services, Find Child Care" showing that the provider is registered and the effective dates of the registration, rather than the previous reference to "virtual pavilion". "Virtual pavilion" was a database that allowed contractors to verify provider registrations.

The change will apply to and should not adversely affect approximately 11 CACFP participants currently receiving reimbursement. It is estimated that 100% of the above-mentioned participants will meet eligibility criteria for this program.

There will not be additional cost to the state. No controversy is anticipated over this change.

ARM 37.75.206

ARM 37.75.206(2) is revised to clarify the wording of and to match the definition in ARM 37.75.101(1) of "active recruitment".

ARM 37.75.206(4) is revised to clarify language so it does not require reporting of suspected violations.

ARM 37.75.206(5)(c) is revised to set forth more concisely the consequences of subsequent violations of active recruitment and includes the provision of written notice as used in previous sections of this rule.

ARM 37.75.206(7) and (8) are deleted as superfluous in light of the clarification set forth in ARM 37.75.206(5)(c).

The change will apply to and should not adversely affect approximately 11 CACFP participants currently receiving reimbursement. It is estimated that 100% of the above-mentioned participants will meet eligibility criteria for this program.

There will not be additional cost to the state. No controversy is anticipated over this change.

ARM 37.75.209

ARM 37.75.209(3)(b) has been updated by changing the term "fifth" to "final" so a provider is not restricted from making a timely decision to change its sponsor.

The change will apply to and should not adversely affect approximately 853 CACFP participants currently receiving reimbursement. It is estimated that 100% of the above-mentioned participants will meet eligibility criteria for this program.

There will not be additional cost to the state. No controversy is anticipated over this change.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 24, 2008.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA do not apply.

/s/ Francis X. Clinch
Rule Reviewer

/s/ Hank Hudson for
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State November 17, 2008.